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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,530	02/08/2001	Douglas L. Boehner	AAC 004	7033

7590

04/09/2002

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EXAMINER

RICCI, JOHN A

ART UNIT

PAPER NUMBER


3712

DATE MAILED: 04/09/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/781,530	Applicant(s) Boehner	
Examiner John Ricci	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

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Applicant's claim for priority based on Provisional Application 60/033545 is acknowledged. However, Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

An application in which the benefits of an earlier application are desired must be copending with the prior application or with an application similarly entitled to the benefit of the filing date of the prior application.

Since 033545 was filed 12/23/96, it expired 12/23/97, which is before the filing date of this application 781530, 2/8/01.

* * * * *

The abstract of the disclosure is objected to because the abstract should include a more complete discussion of the invention. Correction is required. See MPEP § 608.01(b).

* * * * *

Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, line 18, it is not clear if the "vertically extending member" referred to is the same as that of line 2; line 22, there is no antecedent for the "serving head support bracket".

Claim 4, no antecedent for the "control box" or "three propelling motors".

Claim 5, no antecedent for the "control box".

Claim 6, no antecedent for the "control box" or "motor".

Claim 7, no antecedent for the "control box".

Claim 9, no antecedent for the "propulsion head".

Claim 10, no antecedent for the "head".

Claim 11, no antecedent for the "three wheels".

In claim 13, it is not clear where the oscillating bracket is located relative to the other structure.

In claim 15, the "control box" is redundant to that of claim 13.

Claim 16, no antecedent for "each motor".

Claim 18, no antecedent for "the ball isolating wheel".

Claim 19, line 2, includes a typographical error.

It is not clear if claim 21 should depend from claim 1 or 13.

Claim 22, no antecedent for the "ball propulsion head".

Claim 23, no antecedent for the "three wheels".

It is not clear from which claim, claim 24 should depend.

* * * * *

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Floyd et al 4,442,823 in view of D'Angelo et al 3,785,358.

Floyd shows a ball pitching machine including a ball impeller including three wheels, each with a motor; a wheel support frame 57 attached to the motors; and an outer bracket 95 attached to the wheel support frame, to allow rotation of the wheel support frame about a horizontal axis within the outer bracket. However, Floyd does not appear to include a ball reservoir and ball selection device. One would recognize that such a ball reservoir and selection device would be desirable so that a supply of balls could be provided, and automatically be introduced between the wheels. For example, D'Angelo shows that a ball pitching machine may include a reservoir, a ball selection device including a wheel 65, and a tube to deliver a ball to the wheels. One would recognize that this reservoir would be desirable with the machine of Floyd to provide a supply of balls. It would have been obvious to one of ordinary skill

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in the art to provide the machine of Floyd with the ball selection device shown by D'Angelo.

Claims 1-24 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The prior art does not disclose a support for a ball pitching machine, including a main frame having a dual hinge, a deformable parallelogram lifting arm attached at one end to the dual hinge; the second end of the lifting arm rotatably attached to a movable vertically extending member; an oscillating bracket rotatable about a vertical axis; and a ball pitching device mounted on the oscillating bracket to be horizontally rotatable.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

* * * * *

This letter was prepared by Examiner John Ricci, who can be reached at:

Voice: 703-308-4751

Fax: Use 703-872-9302 (872-9303 for After-Final papers) for papers to be delivered directly to the mail room, like

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formal amendments and responses, change of address, power of attorney, petitions.

Use 703-783-0439 for papers to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.

My supervisor is Derris Banks, 703-308-1745.

PTO main switchboard: 800-786-9199.

Visit our Web site at www.uspto.gov.

John Ricci

**JOHN RICCI
PRIMARY EXAMINER
ART UNIT 3712**